

Before the
Federal Communications Commission
Washington, D. C. 20554

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In the Matter of:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Review of Commission Consideration) IB Docket NO. 00-106
of Applications under the)
Cable Landing License Act)

Comments of the Secretary of Defense

The Secretary of Defense, through duly authorized counsel, pursuant to Section 201 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 481, and the Memorandum of Understanding between the Department of Defense and the General Services Administration dated November 27, 1950, hereby files these comments in the above captioned proceeding.

In this rulemaking, the Commission seeks to streamline its procedures relating to the issuance of cable landing licenses under the Cable Landing License Act. It proposes several options that it believes would result in a more timely decision on the applications. The Commission recognizes its obligation under Executive Order 10530 to gain the approval of the Department of State before taking

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action on cable landing licenses.¹ The Commission also asks for comments on whether some or all of the current conditions it routinely imposes on licensees are necessary.

Executive Order 10530 and Executive Agency Participation

Executive Order 10530 Section 5(a) states that "no such (cable landing) license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary." The Department of State routinely coordinates with the DOD under its review process pursuant to Executive Order 10530. For almost all applications, DOD believes it can continue to complete its review within whatever time frame and through whatever process the Department of State and the Commission determine is appropriate. This is true regardless of what streamlining option the Commission may ultimately adopt.

In an extraordinary situation and not routinely, DOD may feel it necessary to advise the Commission of a particular national security concern. Conceivably this might be done outside Department of State's consultative process. If DOD anticipated that its review could not be

¹ Notice of Proposed Rulemaking (NOPRM), par.52 and footnote 85.

accomplished, or any identified issues not resolved in the normal time frame, the Commission would be so advised. This is consistent with the language of the Cable Landing License Act itself which states that the promotion of the security of the United States is a relevant consideration, and Executive Order 10530 which states the Commission may obtain advice from any executive department. In other words, while the Department of State's approval process includes consultation with DOD, the Commission may independently obtain advice on its own. As the Commission is aware, DOD has not recently raised any concerns regarding cable landing license applications even though the number of such applications has increased dramatically. It would only be the rare exception and not the rule that DOD would feel it necessary to independently raise concerns that could not be handled through the Department of State's consultative process. In such a case, DOD would act as expeditiously as possible.

Conditions Imposed on Cable Landing Licenses

The Commission routinely "conditions" its cable landing licenses on compliance by the licensees of

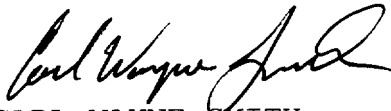
requirements of the Secretary of the Army.² This is unnecessary. The Secretary of the Army's requirements are statutory and independent of any Commission actions or statements. A party may no more land its cable without the necessary permits from the Army Corps of Engineers than it may without the license from the Commission. Attached hereto is a copy of a permit for a cable issued by the Seattle District of the Corps of Engineers.³ It sets forth the statutory underpinnings of its authority (in this case, Section 10 of the Rivers and Harbor Act of 1899, 33 U.S.C. 403, and Section 404 of the Clean Water Act, 33 U.S.C. 1344). Requirements to be followed are indicated to be contained in 33 CFR 325.7, 33 CFR 326.4 and 326.5.

While there is no necessity to condition the Commission's cable landing licenses on compliance with the Corps of Engineers requirements, it would continue to be helpful if notice of those requirements could be given. It is noted that the Corps of Engineer's permit states (Page 2, Par 2(a) "Limits of this authorization"), that "This permit does not obviate the need to obtain other Federal, State, or local authorization required by law." Commission cable landing licenses do not contain such a notice. One


² NOPRM, par. 72,73.

commentor in the Commission-sponsored Public Forum on cable landing licenses, Level 3 Communications, suggested that standard license conditions could be set forth in the Commission's rules. DOD suggests that if notice of the Secretary of the Army's (Corps of Engineers) requirements is not included in the license itself, then it could be described in the Commission's rules along with necessary conditions.

Respectfully submitted,



CARL WAYNE SMITH
General Counsel



PAUL R. SCHWEDLER
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³ The Corps of Engineers maintains a website at www.usace.army.mil. The "Services to the Public", "Regulatory Permits" section contains relevant information.



This notice of authorization must be
conspicuously displayed at the site of work.

United States Army Corps of Engineers

JUN 17 1998
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A permit to INSTALL A FIBER-OPTIC CABLE IN THE STRAIT OF JUAN DE FUCA
BETWEEN
at VICTORIA BC CANADA AND NORTHERN WHIDBEY ISLAND WASHINGTON

has been issued to PIRELLI JACOBSON, INC on JUN 17 1998
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Address of Permittee 5355 - 28TH AVE NW, SEATTLE WASHINGTON 98107

Permit Number

98-2-01432

Stephen A. Wright
JAMES M. RIGSBY
District Commander
CORONEL, CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY PERMIT

Permittee: Pirelli Jacobson, Inc.

Permit No: 98-2-01432

Issuing Office: Seattle District

Pirelli Jacobson, Inc.
5355 - 28th Avenue Northwest
Seattle, Washington 98107

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Install a fiber-optic cable between Victoria, British Columbia, Canada and northern Whidbey Island, Washington. From the landing site, the cable would be placed 4 feet below the surface by a hydroplow device or slant drilling, to a depth of 150 feet; other sections of the cable may be buried at the permittee's discretion. All work will be done in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit. (Improve communication services to and between users in southern British Columbia and the central Puget Sound area of western Washington).

Project Location: In the Strait of Juan de Fuca between Victoria, British Columbia, Canada and northern Whidbey Island, Washington.

Permit Conditions:

General Conditions:

JUN 17 2001

1. The time limit for completing the work authorized ends on JUN 17 2001. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of the permit conditions.

Special Conditions:

a. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

b. You must comply with the provisions of the attached Water Quality Certification.

c. National Ocean Services (NOS) has been notified of this authorization. You must notify NOS and this office in writing at least 2 weeks before you begin work and upon completion of the activity authorized by this permit. Your notifications of completion must include a drawing which certifies the location and configuration of the completed activity (a certified permit drawing may be used). Notifications to NOS will be sent to the following address: NOAA/NOS, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910-3282.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of the permit.

b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Pirelli Jacobson, Inc.

98-2-01432

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

[Signature]
Pirelli Jacobson, Inc.

10/17/98
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for *Stephen A. Wright*
JAMES M. RIGSBY
Colonel Corps of Engineers
District Engineer

6/17/98
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEE)

(DATE)